

1 THE COURT: All right. Let's go on
2 the record with Cases 3 and 4 on today's trial list
3 of April 23, 2015. Case 3, being Lonnie Spector CP
4 case ending in 12821-2013; case 4, being Gregory
5 Spector, CP case ending in 12822-2013.

6 The jurors have submitted another
7 question to the Court. I'll read it.

8 Question Number 8: Was there a
9 charge added after Sardor's statement on April 1,
10 2015? If so, was that charge criminal attempt
11 murder?

12 And the next sub part: May we have
13 the transcript of the cross-examination between
14 Feinman, Lonnie's lawyer, and Sardor?

15 Those are the questions.

16 I don't know what they're referring
17 to with the charge added.

18 MS. HEARD: I think they're asking if
19 there were additional charges added after Sardor
20 made that additional statement on April 1, 2015.

21 THE COURT: I don't -- weren't they
22 initially charged at the same time? That's what I
23 don't understand.

24 MS. HEARD: They were initially
25 charged with what they have been tried for. That's

1 what they were charged with. So I don't think that
2 they don't -- they don't understand the process of
3 charging and that type of thing, but the answer is
4 no.

5 THE COURT: That's what I thought.

6 MS. HEARD: The answer is no.

7 MR. McGOVERN: The answer is no.

8 MS. HEARD: The answer is no.

9 And then with respect to the
10 transcript of the cross-examination between Feinman
11 and --

12 THE COURT: They have to use their
13 recollection.

14 MS. HEARD: -- recollection, yes.

15 THE COURT: Because once you start
16 that -- because it's the cross-examination. Then
17 you'll have to add the direct examination for
18 completeness. They had four books. They're taking
19 notes. They have to use their recollection. I'm
20 not going to open that door. It will never stop.

21 MR. McGOVERN: Your Honor, my -- Your
22 Honor, I would respectfully object to that. Maybe
23 I'm stepping out of line here, but I would object to
24 that, Your Honor, since before it was -- I
25 appreciate it. The Court positioned that unless

1 they ask for something, they're not getting it.

2 This is a very specific request,
3 which I think can be accomplished with relative
4 judicial economy of time, either to print out a copy
5 of -- they're asking for the transcript of the
6 cross-examination.

7 THE COURT: Well, she would have to
8 transcribe it.

9 MR. McGOVERN: I'm not trying to put
10 an additional burden on Ms. Valentino, although I
11 know she may think I'm piling on her, if that could
12 be done easily --

13 THE COURT: It can't be done easily.

14 MR. McGOVERN: Okay. But if it could
15 be done easily to produce a transcript, it could be,
16 I submit, easily done to read back cross-examination
17 to the jury which didn't take that long. The
18 certified court reporter could do -- and as she has
19 done.

20 THE COURT: But then there's
21 redirect, recross --

22 MR. McGOVERN: They didn't ask for
23 that. They only asked --

24 THE COURT: No; but I'm just saying
25 that would open up the door for that. Because then

1 there's the rule of completeness. I don't think so
2 because it only says -- they did take notes -- based
3 on their experience here, they've asked solely for
4 cross-examination of Mr. Feinman and Sardor. That's
5 it.

6 MR. FEINMAN: Your Honor, I would
7 join in the arguments of Mr. McGovern. But I see
8 this also as the panel is at a crossroads at some
9 point, assessing the responses of the complainant to
10 the cross-examination that was presented by myself.

11 I think they need to reconcile, and
12 they may not have the exact questions that maybe are
13 coming up in the deliberations there. And because
14 of that, I think that a reading back of the
15 transcript to the panel could and would address what
16 they may be seeking and as Mr. McGovern did say --

17 And I think we've seen this now
18 through seven prior questions. They're pretty
19 precise on what they are seeking and what they've
20 asked for. And they're pretty clear on that in that
21 respect. Have they felt they needed other
22 testimony, they would have asked for that. They
23 asked for the other day with questions, they asked
24 for statements. So they specifically ask.

25 My sense, they asked for statements

1 for Mr. Bolyaganov and now they've asked for
2 cross-exam. And if Your Honor recalls, a lot of the
3 cross-exam dealt with the information in the
4 statement.

5 THE COURT: Right. Well, first of
6 all, it's not readily -- it's not an easy thing to
7 do to have her set up and go back and do that. And
8 plus, from my experience, that will open that up.
9 Oh, now, I need the direct exam of that. Oh, now I
10 need -- you know, that's why they're taking notes.
11 And I said in the instruction in the beginning,
12 you're responsible to use your recollection. Use
13 your recollection.

14 MR. McGOVERN: If I may, Your Honor.
15 I've had the blessing of trying probably several
16 hundred jury trials and this is not an unusual
17 occurrence. It's occurred in my life and my
18 experience scores of time --

19 THE COURT: I knows it's been asked.

20 MR. McGOVERN: -- where the court
21 reads back the requested --

22 THE COURT: And that's not what
23 they're asking for. They're asking for a
24 transcript. They're not asking that it be read
25 back. They want the transcript.

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1 MR. MCGOVERN: Well, Your Honor, I
2 think semantics in that they're asking for
3 cross-examination.

4 THE COURT: Well, it's not semantics.
5 Transcripts is different. Transcript means you can
6 take it back into the jury room and deliberate with
7 it and have it in your hand. Reading back means
8 that they come in and hear it read back. It's very
9 different.

10 MR. MCGOVERN: Your Honor, I would
11 ask that the jury be brought in and say we are not
12 able to give you the transcript but we are able to
13 read it back to you and would that be acceptable.

14 THE COURT: I'll say no and I'll see
15 what they do. I'm not going to encourage, you know,
16 creating transcripts and creating a whole bunch
17 of -- you know, because that's not readily easy to
18 do.

19 MR. FEINMAN: If I may, Your Honor?

20 THE COURT: If you want to object --
21 I'm not going to go on all day with this.

22 MR. FEINMAN: I understand. If I
23 may, earlier they requested the transcript of a 911
24 tapes.

25 THE COURT: Which was already done.

1 MR. FEINMAN: Transcribed. So if
2 we're saying here only because it's not transcribed,
3 it's not convenient to give it to the jury, I would
4 take exception.

5 THE COURT: That's not the same
6 thing. There's cross-examination. There's direct
7 to that cross-examination. There's redirect
8 examination of that examination, and there's recross
9 to that examination.

10 MR. FEINMAN: They haven't asked for
11 any of that.

12 THE COURT: But once you open the
13 door they're going -- you know, we don't want to
14 start encouraging them to ask that. They were told
15 at the beginning to use their recollection. They're
16 taking notes. And it's my discretion to decide
17 that. I decide that. And if you want to take
18 exception to it, that's fine.

19 MR. FEINMAN: Note my objection.

20 MR. McGOVERN: Yeah, I would have to
21 object. Note my objection, please.

22 THE COURT: All right.

23 Use your recollection and notes.

24 THE COURT: All right. So no, no.

25 MR. McGOVERN: Thank you, Your Honor.

1 We're going to step back.

2 (Whereupon, there was a break in the
3 proceedings.)

4 THE COURT: All right. This is cases
5 3 and 4 on today's trial list of April 23, 2015.
6 Case 3, being Lonnie Spector; Case four being
7 Gregory Spector.

8 The jurors have submitted another
9 question to the court. This will be Question Number
10 nine.

11 The question is, Are theft by
12 unlawful taking and theft by receiving stolen
13 property mutually exclusive.

14 MR. MCGOVERN: I believe they are,
15 Judge. I don't believe you can steal by receiving
16 stolen property and also attempt theft by unlawful
17 taking. It's either one or the other. I mean, you
18 can't be alive and dead.

19 Here, it's attempting to take
20 something and you don't get it, or there's theft
21 that's been accomplished in receiving stolen
22 property. I don't think you can have both.

23 THE COURT: Mr. Feinman, do you want
24 to take a stab at why the Commonwealth charged the
25 Sectors with all of this?

1 MR. FEINMAN: What I would add to
2 that is this, Your Honor -- I think that when you
3 look at the statutes and you look at the charge
4 itself -- instruction, in theory, you can have
5 something that was stolen by a third party. And if
6 you're in possession of it or take possession of
7 that, you could, under the definition of statute as
8 well as under the instruction here, you could be
9 guilty of the attempted theft -- attempted of
10 receiving stolen property. But not necessarily
11 guilty of the actual theft because you didn't take
12 it. You're weren't the one taking it.
13 Consequently, I think that they would be exclusive.

14 MR. McGOVERN: Frankly, I'm amazed at
15 the analytical precision of these lessor included
16 offense questions but...

17 MR. FEINMAN: They are offenses that
18 were listed.

19 MR. McGOVERN: Yes, they are.

20 THE COURT: Commonwealth.

21 MS. HEARD: Your Honor, I would argue
22 that you can have a theft by unlawful taking, and
23 you can have a -- so it's attempted theft unlawful
24 taking and it's attempted receiving stolen property.
25 You can have both. You can have either. You can

1 have neither. You can have one or the other.

2 THE COURT: And that's how I kind of
3 saw it.

4 I know that if you're convicted of
5 theft, right, then it becomes -- you can't be
6 convicted of theft and the RSP together because it
7 merges.

8 MR. McGOVERN: Yes.

9 MS. HEARD: Yes.

10 THE COURT: RSP and theft merges and
11 you can't be convicted of theft and receiving stolen
12 property because receiving stolen property is an
13 element of the theft.

14 MS. HEARD: Correct.

15 THE COURT: So here, theft by
16 unlawful taking and theft by receiving stolen
17 property mutually exclusive...

18 MR. McGOVERN: Maybe Yvonne's
19 answer -- excuse me -- Ms. Heard's answer is he can
20 be found guilty of both, one, or neither, you know,
21 but I don't want a directed verdict.

22 I think the answer is no, they're not
23 mutually exclusive.

24 MS. HEARD: Yes.

25 THE COURT: The answer is no.

1 MS. HEARD: The answer is no.

2 THE COURT: All right. The answer is

3 no. We'll make a copy, send it back down to them.

4 And that's it for now.

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C E R T I F I C A T I O N
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

THERESA VALENTINO
Professional Court Reporter

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